INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Statement of facts	5
Argument	8
Conclusion	27
Appendix	28

CITATIONS

Cases:

Birmingham v. *United States*, 4 F. (2d) 508	17, 21
Brant v. *Virginia Coal & Iron Co.*, 93 U. S. 326	11
Bratton v. *Chandler*, 260 U. S. 110	25
Caha v. *United States*, 152 U. S. 211	17
Cooke v. *United States*, 91 U. S. 389	21
Cramer v. *United States*, 261 U. S. 219	27
Crary v. *Dye*, 208 U. S. 515	11
Dement v. *Rokker*, 126 Ill. 174	22
Filor v. *United States*, 9 Wall. 45	21
Floyd Acceptances, The, 7 Wall. 666	21, 22
Goldberg & Co. v. *City of Cedar Rapids*, 200 Ia. 139	22
Hawkins v. *United States*, 96 U. S. 689	21, 22
Insurance Co. v. *Wolff*, 95 U. S. 326	11
Kendall v. *United States*, 12 Pet. 524	19
Lee v. *Munroe*, 7 Cranch 366	21
Lynch v. *United States*, 292 U. S. 571	25
McCormick v. *Market Bank*, 165 U. S. 538	22
Maryland Casualty Co. v. *United States*, 251 U. S. 342	17
Mellon v. *United States*, 36 F. (2d) 609	19
New York Life Ins. Co. v. *Slocum*, 177 Fed. 842; 228 U. S. 364	11
Pine River Logging Co. v. *United States*, 186 U. S. 279	21
Smith v. *Stevens*, 10 Wall. 321	18
Sternfeld v. *United States*, 32 F. (2d) 789	17, 21
Sturm v. *Boker*, 150 U. S. 312	11
Sutliff v. *Lake County Commissioners*, 147 U. S. 230	22

Cases—Continued. Page

Sutton v. *United States*, 256 U. S. 575 21
Texas & Pacific Ry. v. *Pottorff*, 291 U. S. 245 22
Thompson v. *Sioux Falls National Bank*, 150 U. S. 231 11
Town of South Ottawa v. *Perkins*, 94 U. S. 260 22
United States v. *Jin Fuey Moy*, 241 U. S. 394 25
United States v. *Loveland*, 25 F. (2d) 447 (error confessed 278 U. S. 665) 21
United States v. *Worley*, 281 U. S. 339 24
Utah Power & Light Co. v. *United States*, 243 U. S. 389 ..... 21, 23
Whiteside v. *United States*, 93 U. S. 247 21
Wisconsin Central R'd. v. *United States*, 164 U. S. 190 22
Wood v. *United States*, 16 Pet. 341 18

Statutes:

Act of October 6, 1917, c. 105, 40 Stat. 398, 399, 400, 409, 410:
Sec. 13 28
Sec. 20 29
Sec. 400 29
Sec. 402 30
Sec. 403 30
Sec. 404 30
Act of August 9, 1921, c. 57, Sec. 409, 42 Stat. 147, 157 31
Act of December 24, 1919, c. 16, Sec. 18, 41 Stat. 371, 376 28
Act of June 7, 1924, c. 320, 43 Stat. 608, 612, 625, 626:
Sec. 5 32
Sec. 17 32
Sec. 302 34
Sec. 306 36
Act of March 4, 1925, c. 553, Sec. 300, 43 Stat. 1308 33
Act of June 2, 1926, c. 449, Sec. 301, 44 Stat. 686 34
Act of July 2, 1926, c. 723, 44 Stat. 790, 792, 799, 800:
Sec. 28 33
Sec. 304 35
Sec. 308 37

Miscellaneous:

V. A. Reg. No. 122, Oct. 28, 1925:
Sec. 5102 38
Sec. 5104 38
Sec. 5106 38
V. A. Reg. No. 138, July 1, 1926:
Sec. 4110 39
Sec. 4112 39
Bulletin No. 1, War Risk, October 15, 1917 16
H. R. No. 104, pp. 10–11, 67th Cong., 1st Sess 19
Sen. Rep. No. 231, p. 12, 67th Cong., 1st Sess 19

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 210

THE WILBER NATIONAL BANK OF ONEONTA, NEW YORK, as Administrator of the Estate of James Patrick Mahar, Deceased, petitioner

v.

THE UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 88–92) has not been reported. The opinion of the Circuit Court of Appeals is reported in 69 F. (2d) 526 (R. 179–182).

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 12, 1934 (R. 182). The time for filing a petition for a writ of certiorari was extended by a Justice of this Court on June 2, 1934, until August 1, 1934 (R. 184). The petition was filed July 21, 1934, and granted October 8, 1934.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Did the conduct of the officers or agents of the Veterans' Bureau either constitute a waiver of, or estop the United States to deny, compliance by the plaintiff's decedent, a holder of a policy of Government life insurance, with the duly authorized regulations of the Bureau and conditions in the policy providing for lapse of such insurance in the event of nonpayment of any premium on the due date and the conditions of reinstatement thereafter?

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in the Appendix, *infra,* pp. 28–40.

STATEMENT

This suit was instituted in the District Court for the Northern District of New York on April 17, 1930, by the petitioner herein as administrator of the estate of James Patrick Mahar, deceased, seeking to recover death benefits under a policy of United States Government life insurance issued to the plaintiff's decedent. Judgment for the plaintiff was reversed by the Circuit Court of Appeals for the Second Circuit and a writ of certiorari has been granted.

In its petition filed in the District Court the plaintiff alleged that the veteran was issued a

policy of war-risk insurance while in the Army during the World War, and after his discharge allowed it to lapse. That on or before July 1, 1927, he applied for reinstatement of a portion of the insurance, and on September 19, 1927, a Government life-insurance policy in the sum of $5,000 was issued to him, effective July 1, 1927. That the premium on a monthly basis was $3.95. That at the time of his application he paid the sum of $13.90 and received from the Government a receipt for that amount "in full payment of insurance premiums due * * * from July 1, 1927, to October 1, 1927." That all subsequent premiums were paid as they became due. That the veteran became permanently and totally disabled in September 1927 from a diseased growth involving the gall bladder, as the result of which he died December 24, 1927. That the plaintiff was duly issued letters of administration and has made due and timely proof to the defendant of the veteran's disability and death. It was further alleged that the defendant disagreed with the plaintiff as to its claim and refused to pay the same (R. 3–8).

The answer admitted the military service of the veteran, the issuance of insurance during such service and the existence of a disagreement as to the plaintiff's claim. All other allegations in the petition were denied (R. 10–12).

The case was tried before a jury. At the close of the plaintiff's case the defendant moved for nonsuit on the ground that the plaintiff had failed

to prove the insurance policy matured by permanent and total disability or death prior to lapse (R. 78). This motion was denied with permission to renew it (R. 79). At the close of all the evidence the plaintiff moved for a directed verdict for the full amount of the policy and the defendant renewed its motion for nonsuit. The motion was denied, an exception allowed and defendant thereupon moved for a directed verdict. The court then withdrew the case from the consideration of the jury (R. 87) and later delivered an opinion holding that the plaintiff was entitled to judgment on the ground that the defendant was estopped to assert that the policy lapsed for nonpayment of premiums The court stated that the rule as to estoppel of a private insurer is applicable to the Government (R. 88–92). The defendant thereupon tendered proposed findings of fact and conclusions of law. Some were approved and others refused (R. 98–101). The trial judge then made findings and conclusions of his own (R. 92–97) and entered judgment for the plaintiff (R. 106–108). To some of these findings exceptions were filed on behalf of the defendant (R. 102–104).

Upon an appeal duly perfected by the defendant (R. 108–117, 177–178) the judgment was reversed. The Circuit Court of Appeals for the Second Circuit held that by the terms of the policy and regulations the veteran's insurance lapsed prior to October 17, 1927 (the date the trial court found that the veteran became permanently and totally

disabled) for nonpayment of the premium due September 1, 1927, and that no conduct on the part of the Veterans' Bureau or any other governmental agency could constitute a waiver of the regulations and policy provisions or estop the Government to invoke them (R. 179–183).

The pertinent facts, as disclosed by the evidence, are as follows:

James Patrick Mahar, the plaintiff's decedent, was issued a policy of yearly renewable term insurance in the sum of $10,000 while in the Army of the United States during the World War. He allowed it to lapse for nonpayment of the premium due August 1, 1919 (R. 145). On July 1, 1927, he submitted to the Veterans' Bureau an application to reinstate $5,000 of this insurance requesting that the effective date thereof be "the first day of the month in which requirements have been complied with" (R. 157). Conversion was not mentioned. The application was accompanied by a remittance of $13.90 (R. 20, 135). In the application (Defendant's Exhibit 2, R. 156–165) the following allocation of the sum remitted appears over Mahar's signature (R. 158):

Premiums Tendered With Application:	
(a) For first month of lapse	$6.70
(b) For month of July '27, reinstatement of Term Insurance	3.35
(c) Advance premium on Term Insurance ,5,000	3.85
(d) For first payment on ($5,000 deleted) Government (converted) insurance ($3.85 deleted).	
Total	13.90

Soon after this application was sent, Mahar received a "Provisional Receipt" in which the receipt was acknowledged of the remittance "in connection with your application for *conversion* of term insurance into United States Government life insurance" (Italics ours). There was also a paragraph designated as "Important" in which the insured was advised that the insurance "shall be effective subject to the World War Veterans' Act, 1924, and Regulations, i. e., provided that previous term insurance be in force, or if lapsed, reinstatement thereof be approved by the Bureau; or if there be no previous term insurance that the applicant be entitled to Government Life Insurance; and that proper amount be tendered to cover the premium and that application be acceptable to the Bureau; otherwise the above remittance will be returned to the depositor." (Plaintiff's Exhibit 3, R. 136–137.)

Shortly after the middle of September the veteran received a five-year convertible term policy of Government life insurance which showed on its face that it was issued September 19, 1927, but effective July 1, 1927 (Plaintiff's Exhibit 1, R. 120). The trial court found that the date of issuance was "on or about September 19, 1927" (R. 94).

The policy contained provisions to the effect that the monthly premium was $3.95 (R. 118) and unless it should be paid on the first of each month or within the grace period of thirty-one days, the policy would become void and subject to reinstate-

ment only on evidence of insurability "satisfactory to the Director of the United States Veterans Bureau, and upon the payment of all premiums in arrears, with interest * * *" (R. 121). The widow testified that she had read the policy and noticed the provisions as to the payment of premiums (R. 36, 37). No inquiries of the Veterans' Bureau were made by or on behalf of the veteran as to the status of his insurance and no further remittances were made until November 2d, after he had become ill. At that time his wife, under his direction, forwarded the sum of $3.95 (R. 22, 37) and on December 20th a similar remittance was made (R. 23, 38). Neither remittance was accompanied by an application for reinstatement or any notice of the fact that his condition had changed and that he was then in poor health. The trial court found that he became totally and permanently disabled on October 17, 1927, and that he died December 24, 1927 (R. 94).

In January 1928, still in ignorance of the veteran's illness and death, the Veterans' Bureau addressed a letter to him acknowledging receipt of a remittance of $3.95 tendered in payment of the September premium and advising that as it had not been sent until after the expiration of the grace period it could not be accepted in payment of the premium until the insurance had been reinstated. A form of application for reinstatement and directions concerning the same were also enclosed, together with a statement showing the amount

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already received and the balance due to carry his insurance through the month of January 1928, as follows (R. 141:)

Premiums through Jan. 1928	$19.75
Received	10.55
Premium Bal. Due	9.20

ARGUMENT

It is indisputable and seems to be conceded that under the terms of the veteran's policy of insurance and the Regulations of the Veterans' Bureau his insurance expired October 2, 1927, for failure to pay the premium due September 1st within the grace period of thirty-one days (Regulation 122, Secs. 5102 and 5104, *infra*, p. 38, Policy Art. 1, R. 120–121) and was not reinstated thereafter. The policy provided as conditions to reinstatement that there be " evidence of the insurability of the Insured satisfactory to the Director of the United States Veterans' Bureau, and * * * payment of all premiums in arrears, with interest from their several due dates * * *" (R. 121). The Regulation of the Veterans' Bureau then in force (Regulation 122, Sec. 5106, *infra*, pp. 38–39) specified that to reinstate within three calendar months from the due date of the unpaid premium the applicant must be "in as good health as he was at the due date of the premium in default" and to reinstate thereafter he must be in good health and so state in his application, and also submit a report of a medical examination and such other evidence of insurability as may be required by the Director. The

sums tendered on behalf of Mahar in November and December, subsequent to the expiration of the grace period for the payment of premiums on his policy, were manifestly insufficent to have effected a reinstatement within the terms of the regulation and policy. Even if they had been sufficient in amount reinstatement could not have been effected since he made no application and the state of his health alone would have been sufficient to have prevented it.

The plaintiff, however, claims that the sums of money tendered on behalf of Mahar in November and December were sufficient to cover the premiums for the months of September and October; that he became permanently and totally disabled in October, according to the trial court's finding, thereby maturing the policy, making disability benefits payable and relieving him from the necessity of making further payments; and that the Government has waived or is estopped to invoke the provisions of the policy and regulations governing the timely payment of premium or reinstatement after lapse, by the conduct of the officers or agents of the Veterans Bureau in issuing the policy without advising him of the amount of money then due in order to keep his insurance in force. This, it is asserted, induced him to suppose that the sum remitted was sufficient to keep his insurance in force through the month of October, or that the regulations and policy provisions governing the time of payment of premiums or those relating to reinstatement, had been waived.

The Government, on the other hand, contends that an estoppel may not be invoked unless the party who asserts that he was misled by the conduct of the person sought to be estopped had a reasonable justification for relying thereon; that, under the circumstances, Mahar was not in fact justified in assuming that his remittance was sufficient to keep the insurance in force beyond the month of August or that provisions as to timely payment or reinstatement had been waived; that in any event the provisions of the insurance contract relating to the payment of premiums and reinstatement are fixed by statute and regulations which have the force of law; that waiver of these provisions by any officer or agent of the Veterans' Bureau is in effect prohibited by statute; and that as knowledge of the contents of such statutory provisions and regulations was imputed to the veteran as a matter of law, it may not successfully be maintained, for that reason alone, that he was misled by the conduct of officers or agents of the Veterans' Bureau.

The doctrine of waiver, as asserted against an insurer to avoid the strict enforcement of conditions contained in its policy "is only another name for the doctrine of estoppel" and can only be invoked where the conduct of its officers or agents has been such as to induce action by the insured in reliance upon it, and where it would operate as a fraud upon the insured if the insurer were afterwards allowed to disavow such conduct and enforce

the conditions of the policy. *Insurance Co.* v. *Wolff,* 95 U. S. 326, 333. Moreover, an estoppel may not be invoked in favor of one who may not assert that he has been misled, either because he knew the true state of facts (*Thompson* v. *Sioux Falls National Bank,* 150 U. S. 231, 244; *New York Life Ins. Co.* v. *Slocum,* 177 Fed. 842, 849, reversed on other grounds, 228 U. S. 364) or because the means of knowledge were convenient and available to him. *Brant* v. *Virginia Coal & Iron Co. et al.,* 93 U. S. 326, 337; *Sturm* v. *Boker,* 150 U. S. 312, 336; *Crary* v. *Dye,* 208 U. S. 515, 521.

A review of the evidence shows that Mahar knew or had convenient means of ascertaining after he received the policy in September that the sum remitted by him with the application in July was not sufficient to keep the insurance in force beyond October 1st.

It was provided by the statute (Section 301, *infra,* p. 34) that all yearly renewable term insurance should be converted into other forms of insurance not later than July 2, 1927. Consequently, if a veteran wished to reinstate and convert the insurance previously held by him it was necessary for him to do so on or before that day, tendering with his application a remittance of an amount sufficient to cover one monthly premium (for the grace period) on the amount of the term insurance reinstated and an amount sufficient to cover the first monthly premium on the converted insurance (Regulation 138, Sec. 4110, *infra,* p. 39).

Mahar's application, although filed one day before the expiration of the statutory time limit for reinstatement and conversion, sought only reinstatement of the yearly renewable term insurance formerly held by him. Conversion was not mentioned and evidently was not sought at that time. Apparently he proposed to reinstate $5,000 of his former insurance, to remit a sum sufficient to maintain it through the month of August and to convert it later. For in his application (R. 158) part of the sum of money remitted is allocated "For month of July '27, reinstatement of Term Insurance", and another for "Advance premium on Term Insurance $5,000." An additional sum of $3.85 originally inserted in an item designated "For first payment on * * * Government (converted) insurance" was deleted, thus indicating an original intention on his part to convert which was later abandoned for the time being. He allocated the sum of $6.70 "For the first month of lapse" apparently under the impression that he was required to pay a premium for that month on the full $10,000 of insurance previously held by him, whereas only half of that amount was required since only half of the original insurance was reinstated (R. 145–146).

Although Mahar's evident purpose to maintain a part of his original term insurance in force beyond July 2, 1927, could not be accomplished, it was evident that if he had known this he would in all probability have sought to convert as well as reinstate.

The Veterans' Bureau therefore ignored the defect in his application and issued to him the least expensive form of Government life insurance—a five-year convertible term policy which could be exchanged within five years without medical examination for another policy based on any plan of insurance issued by the Bureau at a higher rate of premium (Article 18 of the policy, R. 131). The sum remitted by Mahar was accordingly applied to the payment of the premium on $5,000 of yearly renewable term insurance for August 1919 (the first month of lapse), and the premiums for the months of July and August on the Government (converted) life-insurance policy, leaving a balance of $2.65 to Mahar's credit (Plaintiff's Exhibit 7, R. 145–146).

The fact that the policy was not issued until about two and one-half months after the application was made was no doubt due to the defect in the form of the application and the fact that it was one among 245,000 received by the Veterans' Bureau during the closing weeks prior to July 2, 1927, the last day for reinstatement and conversion.* In any event no prejudice resulted from the delay since the date of application (July 1, 1927) was the effective date of the insurance (R. 120) and shortly after the application was filed Mahar had received a provisional receipt indicating on its face that the application was being treated as one for conversion and that his insurance would be effective if he had complied with the statute and regulations (R. 136).

* Annual Report of the Director 1928.

It is true that Mahar was not advised as to the allocation of the $13.90 which accompanied his application, but it must have been apparent to him when he received the policy in September that it was insufficient to keep the insurance in force beyond the grace period for the payment of the premium due on the first of that month, and that if the full amount of such premium was not paid prior to the expiration of the grace period on October 1st his insurance would expire. He evidently knew that part of the sum remitted must necessarily have been applied to pay the premium for the first month of lapse of the original term insurance and the policy sent him provided that its effective date was July 1st (R. 120) and that "the payment of the monthly premium of $3.95 on the first day of each month" was required to keep the insurance in force. The petitioner contends that Mahar had reason to believe that his policy was not effective until September 1, 1927, from the fact that he indicated in his application that reinstatement should be effective "the first day of the month in which requirements have been complied with" (R. 157) and in spite of the statement in the policy that its effective date was July 1, 1927. It is submitted that these facts compel a contrary conclusion. The provisional receipt indicated by its contents that the Veterans' Bureau was treating his application as one for conversion as well as reinstatement and that the insurance would be effective if he had complied with the statute and

regulations. He therefore had every reason to believe when he received the policy that the insurance had been in effect since the date of the application, particularly since the policy so stated on its face.

It must have been evident to Mahar that after applying the sum of $11.95 necessary to pay the premiums for the months of July, August, and September, the balance of $2.05 was insufficient to pay the premium for the first month of lapse of his former insurance. His application indicates that at the time he made it he was under the impression that the sum of $6.70 was due for that purpose, an amount sufficient to pay the premium on the full $10,000 of insurance previously held by him. There appears to have been no justification for a later assumption on his part that less than half of that amount was sufficient, and if he remained under the same impression after the policy was issued he could only have concluded that the $13.90 was insufficient by $4.65 to reinstate, convert, and pay the premiums on the converted policy through the month of September; in other words, that it was insufficient even to cover the premium for August. In short, when he received the policy in the middle of September, Mahar may not have known, in fact, the exact amount of money which was then due to keep his insurance in force and might reasonably have supposed that it was greater than it actually was, but there was no justification whatever for an

assumption on his part that it was less. The policy showed on its face that the grace period would expire October 1st. Mahar had no reason to expect that the Veterans' Bureau would advise him further as to the status of his insurance before that date. They had not previously indicated in any manner that they would do so, and from the fact that the policy was issued only eleven days prior thereto it should have been evident that they would not. Obviously, therefore, the only course consistent with reasonable prudence would have been to remit the amount which he might reasonably have supposed to be then due and which would have been more than sufficient, unless more exact knowledge could have been obtained by inquiry.

But whatever Mahar knew or should have known in fact, full knowledge of the status of his insurance was imputed to him in law. Bulletin No. 1, issued October 15, 1917, by the Director of the Bureau of War Risk Insurance (predecessor of the Veterans' Bureau),[1] contains all the information necessary to determine the amount of the premium for the first month of lapse (required to be paid in order to reinstate yearly renewable term insurance). It provides that the insurance be issued "at monthly rates for the age (next birthday) of the insured when the insurance goes into effect increasing annually upon the anniversary of the policy to the rate for an age one year higher as per the following table

[1] Regulations and Procedure U. S. Veterans' Bureau, Pt. II, p. 1233, *et seq.* (U. S. Govt. Printing Office, 1930.)

of rates: (Then follows a table of rates of premiums to be paid at ages ranging from 15 to 65 for amounts of insurance ranging in multiples of 500 from $1,000 to $10,000.) The bulletin and Regulation 138 (*infra,* pp. 39–40), which provides the conditions of reinstatement and conversion, having been issued pursuant to statutory authority (War Risk Insurance Act, as amended October 6, 1917, Secs. 13 and 402 (*infra,* pp. 28, 30); World War Veterans' Act of June 7, 1924, Section 5 (*infra,* p. 32), have the force and effect of law (*Maryland Casualty Co.* v. *United States,* 251 U. S. 342, 349; *Birmingham* v. *United States,* 4 F. (2d) 508, 510 (C. C. A. 8th); *Sternfeld* v. *United States,* 32 F. (2d) 789, 790 (N. D.–N. Y.) and cases cited) and are public records. Hence, notice of their contents is imputable to everyone. *Caha* v. *United States,* 152 U. S. 211, 222. There is therefore no ground in fact or in law for the petitioner's contention that Mahar was induced by the conduct of the Veterans' Bureau to suppose that the sum of money remitted with his application was sufficient to keep the insurance in force until the next remittance was made in November.

Similarly there is no merit in the petitioner's contention in the alternative that the payment of the premiums for the months of September and October was waived or that Mahar was justified in thinking so since no officer or agent of the Veterans' Bureau had the power to grant such a waiver, and of this he was chargeable with knowledge. The peti-

tioner directs attention (Br., p. 12) to a clause in Article 21 of the policy (R. 134) providing that "no person except the Director of the Veterans' Bureau may waive forfeitures, * * * or extend the time for paying the premium, * * *." That this clause may have intended to induce belief on the part of veterans that the Director possessed the authority to extend the time for the payment of the premiums is beside the point since everyone is chargeable with knowledge that no such authority existed in law.

An examination of the statutes and regulations in force at the time the policy was issued shows unmistakably that the Congress intended to prohibit the waiver of payment of a premium on its due date in cases like the one at bar.

By Section 13 of the War Risk Insurance Act, as amended October 6, 1917, *infra,* p. 28, the Director of the Bureau of War Risk Insurance was given (subject to the general direction of the Secretary of the Treasury) full power and authority to make rules and regulations, not inconsistent with the provisions of the Act, necessary or appropriate to carry out its purposes, and it was specifically provided in Section 404, *infra,* pp. 30, 31, thereof that such regulations shall prescribe the time and method of payment of the premiums on Government life insurance. In Section 409 of the War Risk Insurance Act, as amended August 9, 1921, *infra,* pp. 31–32, the Congress specifically designated certain classes of persons as to whom pay-

ment of premiums on the due dates might be waived, thus exhibiting an unmistakable intention to exclude all others. *Smith* v. *Stevens,* 10 Wall. 321; *Wood* v. *United States,* 16 Pet. 341, 363; *Kendall* v. *United States,* 12 Pet. 524, 650–651; *Mellon* v. *United States,* 36 F. (2d) 609, 610 (Ct. App. D. C.). The persons so designated were those (a) confined in a Government hospital or (b) rated as temporarily totally disabled by reason of an injury or disease entitling them to compensation. A similar provision was contained in Section 306 of the World War Veterans' Act, 1924, *infra,* pp. 36–37, in force at the time Mahar's policy was issued, adding as class (c) those who were mentally incompetent and without a legal guardian. Mahar manifestly was not a member of any of the classes specified. Obviously, any waiver of the payment of a premium on his policy on the date specified therein (R. 120–121) and in the regulation then in effect (Regulation 122, *infra,* p. 38) would have been contrary to the intention of the Congress as expressed in the statute and indicated by the Committee Reports, House Report No. 104, pp. 10–11 and Senate Report No. 231, p. 12, of the 67th Congress, First Session.

Equally manifest was the intent to forbid waiver of the provisions as to reinstatement. The only provisions of that character contained in a statute are to be found in Sections 304 and 308 of the World War Veterans' Act, *infra,* pp. 35, 36, 37. Section 304 provided for reinstatement of the insurance held by veterans who were partially disabled as the

result of an injury or disease suffered or contracted in the military or naval service during the World War. Section 308 required the Director to reinstate insurance if an amount sufficient to reinstate under the regulations were forwarded not later than the 7th day of the month following the one for which the unpaid premium was due and provided that it be shown to his satisfaction that the insured was at that time in the state of health required by the regulations. For the reasons already stated as to the provisions relating to the payment of premiums it is obvious that the Congress intended that the regulations and provisions of the policy as to reinstatement should not be waived except as indicated in these two sections of the statute. In this connection it might be well to add that any other construction of the statute would make these sections meaningless and furthermore would be contrary to the evident intention of Congress that the Director should not only promulgate regulations on the matters in question but should abide by the regulations so made until changed. For if authority existed to waive timely payment of premiums or the provisions as to reinstatement other than as indicated in the statute this would be tantamount to an authority to administer the insurance provided by the Act without regulation contrary to the evident purpose of Sections 5 and 301, *infra*, pp. 32, 34.

Since the Congressional intent to prohibit any waiver of the provisions in the regulations and policy as to the timely payment of premiums or re-

instatement after lapse was manifest in the statute and knowledge thereof was therefore imputed to Mahar, there is no possible ground for asserting that he was misled in that regard by the conduct of any of the officers or agents of the Veterans' Administration.

It is a well established rule that the United States is neither bound nor estopped by the acts or omissions of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit. *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409; *Sutton* v. *United States,* 256 U. S. 575, 579; *Lee* v. *Munroe,* 7 Cranch 366, 369; *Filor* v. *United States,* 9 Wall. 45, 49; *Pine River Logging Co.* v. *United States,* 186 U. S. 279, 291; *Birmingham* v. *United States, supra; United States* v. *Loveland,* 25 F. (2d) 447 (C. C. A. 3d), (error confessed for failure to file a written waiver of jury trial, 278 U. S. 665); *Sternfeld* v. *United States, supra.* This rule applies as well to commercial enterprises or transactions in which the Government engages not in its capacity as a sovereign as to those in which it is acting in such capacity, *The Floyd Acceptances,* 7 Wall. 666, 682; *Cooke* v. *United States,* 91 U. S. 389, 401–402; and to conduct within as well as without the general scope of the authority of the officers or agents, *Whiteside* v. *United States,* 93 U. S. 247, 257; *Hawkins* v. *United States,* 96 U. S. 689, 691.

Petitioner contends that the status of the United States in suits against it on contracts of Govern-

ment life insurance is that of a mere trustee of the Government Life Insurance fund for the benefit of the policy holders and that hence it is not a real party in interest. Petitioner does not state what bearing his contention has upon the case at bar but perhaps it means to suggest that if its contention were correct the rule that the United States is not estopped by the acts or omissions of its agents contrary to law would not apply here. It is submitted that even were the United States not a real party in interest, the rule would nevertheless apply since it is founded not only upon public policy looking to the protection of public funds from collusion, but also upon the distinct ground that as the limits of the authority of public officers and agents are fixed by law, knowledge of such limits is imputed to everyone upon the theory fundamental in our system of Government that everyone is presumed to know the law. *The Floyd Acceptances, supra; Cooke* v. *United States, supra; Hawkins* v. *United States, supra; Wisconsin Central R'd* v. *United States,* 164 U. S. 190, 210–212; *Town of South Ottawa* v. *Perkins,* 94 U. S. 260, 262; *Sutliff* v. *Lake County Commissioners,* 147 U. S. 230; *Dement* v. *Rokker,* 126, Ill. 174, 199; *Goldberg & Co.* v. *City of Cedar Rapids,* 200 Ia. 139, 142. Upon the same ground it is held that a private corporation may not be estopped by acts of its officers or agents which are *ultra vires. McCormick* v. *Market Bank,* 165 U. S. 538, 550; *Texas & Pacific Ry.* v. *Pottorff,* 291 U. S. 245, 260. And so, in the case at bar, knowledge

was imputed to Mahar that the statute forbade the officers or agents of the Veterans' Bureau to waive the provisions of the regulation and policy as to the time for paying premiums or as to reinstatement after lapse. There is, therefore, no basis for contending that he was misled in that respect and no estoppel can arise against the Government on that score.

Even if Mahar were not chargeable with knowledge of the contents of the Regulations of the Veterans' Bureau and of the want of authority on the part of its officers to waive them for his benefit, petitioner nevertheless cannot recover, since the Government is here acting in its sovereign capacity and has a substantial pecuniary interest in the outcome of this case. It would therefore not be bound by the unauthorized acts or neglect of duty on the part of its officials. *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409 (*supra*).

As has been pointed out in the brief in opposition, the Government makes substantial contributions to the Government Life Insurance fund and takes nothing in return. From the termination of the World War, when Government life insurance was first established (Section 404, *infra,* pp. 30–31), until the last day of December 1924, it has reimbursed the Fund for benefits paid on account of death or disability traceable to the extra hazards of military or naval service alone (Section 301, *infra* p. 34) in amounts which in the aggregate were more than half of the total of all

payments made from the Fund for disability and death during that period. Although the Government's contributions since then have diminished proportionately, they amounted to well over $7,000,000.00 in 1932. See Reports of the Administrator of Veterans' Affairs for 1932, p. 162; for 1933, p. 72. Manifestly, payments of benefits derived from such insurance "include both insurance and pension" and therefore the Government cannot be said to have stepped down from its position of sovereignty and entered the field of commerce. Hence it is not liable for interest on such benefits nor subject to any liabilities inconsistent with sovereignty. *United States* v. *Worley,* 281 U. S. 339, 343.

It is not to be inferred from the fact that the Government derives no financial benefit from Government life insurance that it lacks a substantial financial interest in defending suits on policies of such insurance. It is true that the statutes in force at the time the policy in this case was issued provided that "such liabilities as shall have been or shall hereafter be reduced to judgment" are payable from the Government Life Insurance Fund and that the Bureau is authorized to set aside from the fund "such reserve funds as may be required, under accepted actuarial principles, to meet all liabilities under such insurance; * * *" (Section 17, *infra,* p. 32). However, an examination of the history of the statutes relating to this insurance shows conclusively that the United States from the begin-

ning has itself undertaken to be the insurer and has at no time attempted to shift its responsibility as such to the policyholders themselves. It is evident that the purpose of the creation of the Government Life Insurance Fund was administrative only. It had no more effect on the Government's liability incident to its undertaking as an insurer than would the creation of a similar fund have upon the liability of a commercial insurance company. That this was the intention of the Congress clearly appears from the fact that in the original Act providing for Government life insurance no provision was made for the creation of the Government Life Insurance Fund or any fund for such insurance separate and apart from the Military and Naval appropriation into which all premiums and from which all liabilities were paid whether from yearly renewable term or Government life insurance (Section 20 of War Risk Insurance Act, as amended Oct. 6, 1917, *infra,* p. 29). The Government Life Insurance Fund was not created until more than a year later by the Act of December 24, 1919 (Section 18, *infra,* p. 28). To construe this section as having the effect of transferring the obligations undertaken by the United States on its contracts of Government life insurance to the policyholders themselves would render this section unconstitutional on the ground that it would impair the contract rights of the policyholders in contravention of the Fifth Amendment. *Lynch* v. *United States,* 292 U. S. 571. It is a well-settled rule of this Court that such a con-

struction is to be avoided if fairly possible. *Bratton* v. *Chandler,* 260 U. S. 110, 114; *United States* v. *Jin Fuey Moy,* 241 U. S. 394, 401.

It cannot, therefore, be a matter of doubt that the United States has a real pecuniary interest in defending this suit. In cases where the Government reimburses the Government Life Insurance Fund under Sections 28, 302, 304, and 306 of the statute (*infra,* pp. 33, 34, 35, 36, 37) its interest is obvious. But even in cases where there is no such reimbursement it is none the less real. Although it is provided that the Government Life Insurance Fund shall be administered in such a way as to be self-sustaining, if possible, the Government would be liable in the event of a deficiency. Moreover, it is by no means outside the realm of possibility that such a deficiency may occur even though the Fund be handled with the utmost prudence. A tremendous potential liability exists in the provisions for the payment of permanent total disability benefits. There is no age limit for the payment of such benefits, and the risk assumed for them is not reflected in the premium rate, since the basis for calculating it is limited by statute to the American Experience Table of Mortality and interest at 3½% per annum (Section 300, *infra,* p. 33).

It can scarcely be maintained that the Government has not a real pecuniary interest in any litigation affecting the Fund. Indeed, even were this not true, its interest as a sovereign in preserving the Fund for the benefit of the veterans and those

policy holders still in its service would, it is submitted, be sufficient alone to prevent impairment of their interests by an estoppel founded upon unauthorized conduct or neglect of duty on the part of Government officials over whom they have no control. *Cf. Cramer* v. *United States,* 261 U. S. 219, 234.

CONCLUSION

For the reasons stated it is respectfully submitted that this Court should affirm the judgment of the Circuit Court of Appeals.

Respectfully submitted.

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DECEMBER 1934.

APPENDIX

PERTINENT STATUTES AND REGULATIONS

Pertinent sections of the War Risk Insurance Act, as amended, provide in part as follows:

> SEC. 13. That the director, subject to the general direction of the Secretary of the Treasury, shall administer, execute, and enforce the provisions of this Act, and for that purpose have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, necessary or appropriate to carry out its purposes, * * * (October 6, 1917, c. 105, 40 Stat. 398, 399).
>
> SEC. 18. That all premiums paid on account of insurance converted under the provisions of Article IV of the War Risk Insurance Act shall be deposited and covered into the Treasury to the credit of the United States Government life insurance fund and shall be available for the payment of losses, dividends, refunds, and other benefits provided for under such insurance. Payments from this fund shall be made upon and in accordance with awards by the director.
>
> The Bureau of War Risk Insurance is hereby authorized to set aside out of the fund so collected such reserve funds as may be required, under accepted actuarial principles, to meet all liabilities under such insurance; and the Secretary of the Treasury is hereby authorized to invest and reinvest the said United States Government life insur-

ance fund, or any part thereof, in interest-bearing obligations of the United States and to sell the obligations for the purposes of the said fund (December 24, 1919, c. 16, 41 Stat. 371, 376).

SEC. 20. That there is hereby appropriated, from any money in the Treasury not otherwise appropriated, the sum of $23,000,000, to be known as the military and naval insurance appropriation. All premiums that may be collected for the insurance provided by the provisions of Article IV shall be deposited and covered into the Treasury to the credit of this appropriation.

Such sum, including all premium payments, is hereby made available for the payment of the liabilities of the United States incurred under contracts of insurance made under the provisions of Article IV. Payments from this appropriation shall be made upon and in accordance with awards by the director (October 6, 1917, c. 105, 40 Stat. 400).

SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided (October 6, 1917, c. 105, 40 Stat. 409).

SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. * * * Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid-up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. * * * (October 6, 1917, c. 105, 40 Stat. 409, 410).

SEC. 403. That the United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum (October 6, 1917, c. 105, 40 Stat. 410).

SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, and

into other usual forms of insurance, and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election (October 6, 1917, c. 105, 40 Stat. 410).

SEC. 409. The Veterans' Bureau is authorized to make provision in accordance with regulations whereby the payment of premiums on yearly renewable term insurance and United States Government life insurance (converted insurance) on the due date thereof may be waived and the insurance may be deemed not to lapse in the cases of the following persons, to wit: (a) Those who are confined in a hospital under said bureau for a compensable disability during the period while they are so confined; (b) those who are rated as temporarily totally disabled by reason of an injury or disease entitling them to compensation during the period of such total disability and while they are so rated: *Provided,* That such relief from payment of premiums on renewable term insurance on the due date thereof shall be for full calendar months, beginning with the month in which said confinement to hospital, or temporary total disability rating begins, and ending with that month during the half or major fraction of which the person is confined in hospital, or is rated as temporarily totally disabled: *Provided further,* That all premiums, the payment of which when due is waived as above provided, shall bear interest at the rate of 5 per centum per annum compounded annually from the due date of each premium, and if not paid by the

insured shall be deducted from the insurance when the same matures either because of permanent total disability or death (August 9, 1921, c. 57, 42 Stat. 147, 157).

The World War Veterans' Act, of 1924, as amended prior to July 1, 1927, the effective date of the policy in this case, provides in part, as follows:

SEC. 5. The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes, * * * (June 7, 1924, c. 320, 43 Stat. 608).

SEC. 17. That all premiums paid on account of insurance converted under the provisions of Title III hereof shall be deposited and covered into the Treasury to the credit of the United States Government life insurance fund and shall be available for the payment of losses, dividends, refunds, and other benefits provided for under such insurance, including such liabilities as shall have been or shall hereafter be reduced to judgment in a district court of the United States or in the Supreme Court of the District of Columbia. Payments from this fund shall be made upon and in accordance with awards by the director.

The bureau is authorized to set aside out of the fund so collected such reserve funds as may be required, under accepted actuarial principles, to meet all liabilities under such insurance; and the Secretary of the Treasury is hereby authorized to invest and reinvest the said United States Government life insurance fund, or any part thereof, in interest-bearing obligations of the United

States or bonds of the Federal farm-loan banks and to sell said obligations of the United States or the bonds of the Federal farm-loan banks for the purposes of such fund (June 7, 1924, c. 320, 43 Stat. 612).

SEC. 28. There shall be no recovery of payments from any beneficiary who, in the judgment of the director, is without fault on his part, and where, in the judgment of the director, such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience.

When under the provisions of this section the recovery of a payment made from the United States Government life insurance fund is waived, the *United States Government life insurance fund shall be reimbursed for the amount involved from the current appropriation for military and naval insurance* (July 2, 1926, c. 723, sec. 4, 44 Stat. 792). (Italics ours.)

SEC. 300. In order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department protection for themselves and their dependents, the United States, upon application to the bureau and without medical examination, shall grant United States Government life insurance (converted insurance) against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided. * * *

* * * * *

The United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the haz-

ards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at 3½ per centum per annum. * * * (March 4, 1925, c. 553, 43 Stat. 1308, sec. 12). (Italics ours.)

SEC. 301. Except as provided in the second paragraph of this section, not later than July 2, 1927, all term yearly renewable insurance held by persons who were in the military service after April 6, 1917, shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, five-year level premium term, and into other usual forms of insurance, and for reconversion of any such policies to a higher premium rate in accordance with regulations to be issued by the director, and *shall prescribe the time and method of payment of the premiums thereon,* but payments of premiums in advance shall not be required for periods of more than one month each, and may be deducted from the pay or deposit of the insured or be otherwise made at his election. * * * (June 2, 1926, c. 449, 44 Stat. 686). (Italics ours.)

SEC. 302. Whenever benefits under United States Government life insurance (converted insurance) become, or have become, payable because of total permanent disability of the insured or because of the death of the insured as a result of disease or injury *traceable to the extra hazard of the military or naval service,* as such hazard may be determined by the director, *the liability shall be borne by the United States,* and the director is hereby authorized and

directed to transfer from the military and naval insurance appropriation to the United States Government life-insurance fund a sum which, together with the reserve of the policy at the time of maturity by total permanent disability or death, will equal the then value of such benefits. * * * (June 7, 1924, c. 320, 43 Stat. 625). (Italics ours.)

SEC. 304. In the event that all provisions of the rules and regulations *other than the requirements as to the physical condition of the applicant for insurance* have been complied with, an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) hereafter made may be approved if made within one year after the passage of this amendatory Act or within two years after the date of lapse or cancellation: *Provided,* That the applicants' disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further,* That the applicant during his lifetime submits proof satisfactory to the director showing that he is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance, where the requirements as to the physical condition of the applicant have not been complied with, or, for the reinstatement of the United States Government life insurance (converted insurance), the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per an-

num, compounded annually, on each premium from the date said premium is due by the terms of the policy: *Provided further,* That where within one year of this amendatory Act all of the requirements for reinstatement of yearly renewable term insurance under this section are complied with, except the payment of unpaid premiums with interest, and proof satisfactory to the director is furnished showing the applicant is unable to pay such premiums with interest or some part thereof, the application may be approved, and the amount of unpaid premiums with interest as provided in this section shall be placed as an interest-bearing indebtedness against the insurance, such indebtedness to bear interest at the rate of 5 per centum per annum, compounded annually, to be deducted in any settlement thereunder: *And provided further,* That no yearly renewable term insurance shall be reinstated after July 2, 1927 (July 2, 1926, c. 723, 44 Stat. 799, Sec. 15). (Italics ours.)

SEC. 306. The bureau is authorized to make provisions in accordance with regulations, whereby the payment of premiums on yearly renewable term insurance and United States Government life insurance (converted insurance) on the due date thereof may be waived and the insurance may be deemed not to lapse in the cases of the following persons, to wit: (a) Those who are confined in hospital under said bureau for a compensable disability during the period while they are so confined; (b) those who are rated as temporarily totally disabled by reason of any injury or disease entitling them to compensation during the period of such total disability and while they are so rated; (c) those who, while mentally incompetent and for whom no legal guardian had been or has

been appointed, allowed or may allow their insurance to lapse while such rating is effective during the period for which they have been or hereafter may be so rated, or until a guardian has notified the bureau of his qualification, but not later than six months after appointment as guardian, the waiver in such cases to be made without application and retroactive when necessary: * * * *And provided further,* That in the event any lien or other indebtedness established by this Act exists against any policy of converted insurance in excess of the then cash surrender value thereof at the time of the termination of such policy of converted insurance for any reason other than by death or total permanent disability the *director is hereby authorized to transfer and pay from the military or naval insurance appropriation to the United States Government life insurance fund a sum equal to the amount such lien or indebtedness exceeds the then cash surrender value* (June 7, 1924, c. 320, 43 Stat. 626). (Italics ours.)

SEC. 308. Wherever yearly renewable term insurance or United States Government life (converted) insurance has heretofore lapsed for the nonpayment of premiums, and the insured has forwarded to the United States Veterans' Bureau, not later than the seventh day of the month following the month for which the unpaid premium was due, an amount sufficient to reinstate the insurance under bureau regulations heretofore or hereafter issued, the director of the bureau is hereby authorized and directed to reinstate such insurance whenever it is shown to his satisfaction that the insured was at the time of the making of the remittance in the state of health required by bureau regulations (July 2, 1926, c. 723, Sec. 17, 44 Stat. 800).

The following Regulations of the Veterans' Administration were in force and effect on July 1, 1927, the effective date of the policy in this case:

Regulation No. 122, dated October 28, 1925, provides in part as follows:

> SEC. 5102. *Premiums.*—United States Government life insurance is granted at the premium rate for the age nearest birthday anniversary of the applicant at the time the policy becomes effective. (Reference: Veterans' Bureau Form 740, entitled "Premium Rates and Policy Values.") Premiums are due and payable monthly in advance, but may be paid annually, semiannually, or quarterly in advance as provided by the terms and conditions of the policy contract (January 1, 1926).
>
> SEC. 5104. *Grace Period.*—The monthly premium when paid shall be deemed to carry such insurance in force for the then current calendar month. A grace period of 31 days, exclusive of the due date, will be allowed for payment of each monthly premium. If the insurance should mature during such grace period, it shall remain in force and the unpaid premium will be deducted from any settlement thereunder. If a premium is not paid during the grace period, the effective date of lapse shall be the due date of the premium in default (January 1, 1926).
>
> SEC. 5106. *Reinstatement.*—United States Government life insurance, if it has not been surrendered for a cash surrender value, may be reinstated at any time by the payment of all premiums in arrears with interest from their several due dates at the rate of 5 per centum per annum compounded annually, and the payment or reinstatement of any indebtedness which existed at the time of lapse,

in accordance with the terms and conditions of the policy contract, and under the following conditions:

A. Within three calendar months including the calendar month for which the unpaid premium was due, provided the applicant is in as good health as he was on the due date of the premium in default.

B. After the expiration of the period mentioned in class A of this section, provided the applicant is in good health and so states in his application, and submits a report of a complete medical examination and such other evidence relative to his physical and mental condition and insurability as may be required by the director, and on such forms as the director may prescribe (January 1, 1926).

Regulation No. 138, dated July 1, 1926, provides in part as follows:

SEC. 4110. In cases where the applicant desires to convert his lapsed or canceled yearly renewable term insurance, under the provisions of section 4112 hereof, and as a condition to reinstatement, he shall make tender of a remittance payable to the Treasurer of the United States for an amount sufficient to cover one premium (grace period) on the yearly renewable term insurance to be reinstated and converted, and at least one monthly premium on the converted insurance (July 2, 1926).

SEC. 4112. Yearly renewable term insurance which has lapsed or has been canceled may be reinstated or reinstated and converted at any time on or before June 2, 1927, by the applicant making tender of the premiums as required in sections 4096, 4110, and 4111, and upon compliance with the

requirements of this section 4112 and under the following conditions:

(a) Within three calendar months, including the calendar month for which the unpaid premium was due, provided the applicant is in as good health as he was on the due date of the premium in default and so states in his application.

(b) After the expiration of the period mentioned in clause (a) of this section, provided the applicant is in good health and so states in his application and submits a report of a complete medical examination and such other evidence relative to his physical and mental condition and insurability as may be required by the director and on such forms as the director may prescribe (July 2, 1926).

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